

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

THE DRY DOCK, L.L.C.,

Plaintiff,

v.

ORDER

09-cv-271-vis

HUSQVARNA CONSUMER OUTDOOR
PRODUCTS INC. and HUSQVARNA
U.S. HOLDING, INC.,

Defendants.

Before the court is plaintiff Dry Dock LLC's motion for entry of a default judgment on the ground that defendants Husqvarna Consumer Outdoor Products Inc. and Husqvarna U.S. Holding, Inc. have not answered the complaint. Dkt. #32. However, defendants filed a motion to dismiss or stay pending arbitration. Dkt. #16. Under Fed. R. Civ. P. 12, the deadline to file an answer is altered when a party asserts an affirmative defense by motion, including arbitration as a ground for a motion to dismiss. Rule 12(b); Mautz & Oren, Inc. v. Teamsters, Chauffeurs, and Helpers Union, 882 F.2d 1117, 1126 n.16 (7th Cir. 1989); DeGroff v. MascoTech Forming Technologies Fort Wayne, Inc., 179 F. Supp. 2d 896, 899 n.2 (N.D. Ind. 2001). Defendants have until ten days after the court rules on their motion within which to answer the complaint. Rule 12(a)(4).

ORDER

IT IS ORDERED that plaintiff Dry Dock, LLC's motion for a default judgment, dkt. #32, is DENIED.

Entered this 15th day of July, 2009.

BY THE COURT:

Barbara B. Crabb
BARBARA B. CRABB
District Judge